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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,542	08/19/2003	Linda J. Flammer	IFF-25-1	4278
48080	7590	05/02/2007	EXAMINER	
INTERNATIONAL FLAVORS & FRAGRANCES INC. 521 WEST 57TH ST NEW YORK, NY 10019			CLAYTOR, DEIRDRE RENEE	
ART UNIT	PAPER NUMBER			
	1617			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/643,542	FLAMMER ET AL.
	Examiner	Art Unit
	Renee Claytor	1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 November 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 27-36 is/are pending in the application.
- 4a) Of the above claim(s) 35-36 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 27-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments and submitted Declaration with respect to claims 1-4, 6, 7, 12-16 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Newly submitted claims 35-36 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 27-34 are drawn to an anti-dandruff shampoo, while the claims 35-36 are drawn to a method of reducing pruritis of the mammalian scalp caused by seborrheic dermatitis.

Since applicant has received an action on the merits for the originally presented invention, the invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 35-36 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections – 35 U.S.C. § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 28, 31 and 34 recites the limitation "...the cooling sensate material is a mixture of menthol and 2-isopropyl-N,2,3-trimethyl butyramide...". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections – 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27, 29-30, 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hu et al. (WO 99/39683) in view of Nakatsu et al. (EP 1 121 927).

Hu et al. teach anti-dandruff shampoo compositions comprised of an antimicrobial agent, which includes agents such as 1-hydroxy-2-pyridinethione with effective concentrations of 0.1% to about 5% (meeting the limitation of an anti-dandruff agent in claims 27, 30, 32; page 12, lines 26-30). Hu et al. further teach that the anti-dandruff shampoo has a cool-feeling agent which includes N-substituted-p-methane-3-carboximides (N-ethyl-p-menthane-3-carboxamide falls within this compound; page 18, lines 8-10 and 21-26). Hu teaches composition comprised of fragrances (see Table on page 39).

Hu et al. does not teach anti-dandruff shampoo compositions that further comprise a nonylic acid vanillyamide.

Nakatsu et al. teach compositions that include cool and warm sensates. Of the compounds listed, N-substituted-p-menthane-3-carboxamide is a cooling agent and nonyl acid vanillyamide is listed as a warming agent (nonyl acid vanillyamide further meets the limitation of claim 1; paragraph 0006). Nakatsu et al. further describe that the sensations associated with the warming sensates prolong and enhance the cooling

effects of cooling sensates (page 3, lines 23-25). The sensate composition is used in products such as shampoos (paragraph 0040). Because nonyl acid vanillyamide is used in shampoos according to Nakatsu et al., and the chemical compounds and their properties are inseparable (*In re Papesch*, 137 USPQ 43), the functional recitation by Nakatsu et al. of nonyl acid vanillyamide is not considered. Nakatsu et al. further teach fragrances in their composition (paragraph 0030).

The recited fragrance components of claims 33-34 are conventionally used in hair cosmetics and it would have been obvious and within the skill of the art to select the optimal fragrance composition in order to obtain the desired fragrancing effect.

It is obvious to vary and/or optimize the amount of each agent contained in the anti-dandruff shampoo to determine workable ratios, according to the guidance provided by Hu et al. and Nakatsu et al., to provide a composition having the desired properties such as the desired concentrations of each agent to provide a maximal anti-dandruff effect. It is noted that “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Accordingly, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Hu et al., which teach anti-dandruff shampoo compositions with a cool-effect comprised of an anti-dandruff agent and a N-substituted-p-methane-3-carboxamide, with the teachings of Nakatsu et al. which teach the addition of nonyl acid vanillyamide in a shampoo composition. One would have been motivated to combine the different agents into an anti-dandruff shampoo because

it is *prima facie* obvious to combine compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a final composition to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art. *In re Kerkhoven*, 626 F.2d 846, 205 USPQ 1069, 1072 (CCPA 1980).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Renee Claytor whose telephone number is 571-272-8394. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Renee Claytor



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER